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the stockholders, who by by-laws create a board of directors and also consent to the delegation of powers to an executive committee.⁹ In all other cases, however, the power to delegate the duties of deciding the policy of the corporation and of generally overseeing its affairs should be denied. It is the exercise of the discretion and judgment of the directors for the benefit of the stockholders which is expected and required. It is their discretion and judgment that should be exercised.¹⁰

BY WHAT LAW DOMICILE IS DETERMINED. — Whatever force the laws of one country have in another depends solely on the laws of the latter.¹ Thus it is by virtue of their own laws that England² and most of the American states³ permit the movables of an intestate to descend according to the law of that country where the deceased was domiciled at the time of his death. The same is true of the general rule that, subject to some exceptions, the validity of a will, both in England⁴ and America,⁵ is determined by the law of the testator's last domicile. For this reason the foreign law is treated as a fact, and is proved as such.⁶ The result is, that while the territorial law of the state where the movables are situated is the only law which binds them, disposition of them will actually be determined by the law of the owner's last domicile.

Domicile of choice is an inference or conclusion which the common law draws from the fact of residence coupled with the appropriate intent. Both England and America agree on this point, though they differ as to the nature of the intent required.⁷ A recent English case, however, raises an interesting question. Does the law of that country where the deceased resided, or the law of that country where the movables are situated, determine where the deceased was domiciled? A British subject, born in England, had resided in France under such circumstances that the English law would deem him domiciled there, although he did not acquire a domicile which the French law would recognize. He died, leaving a will disposing of movables in England. The English court decided that both as to validity and construction the will should be governed by English law. *In re Bowes*, 22 T. L. R. 711 (Ch. D., July 18, 1906). The case follows without discussion a prior Chancery decision which, on similar facts as to the domicile of a Maltese person in Baden, decided that Maltese law governed the succession to the English movables of the intestate.⁸ Neither decision cited any authority on this point, but both proceeded on the apparently wrong assumption that the

⁹ *Union Pac. R. R. v. Chicago, R. I. & Pac. Co.*, 163 U. S. 564.

¹⁰ *Tempel v. Dodge*, 89 Tex. 68; *Weidenfeld v. Sugar Run R. R. Co.*, 48 Fed. Rep. 615; *Charlestown Boot & Shoe Co. v. Dunsmore*, 60 N. H. 85. *Contra*, *Hoyt v. Thompson's Executor*, 19 N. Y. 207; *Burrill v. Nahant Bank*, 2 Met. (Mass.) 163; *The Black River Improvement Co. v. Holway*, 85 Wis. 344.

¹ See Story, Conf. of Laws, §§ 18, 20, 23.

² *Crispin v. Doglioni*, L. R. 1 H. L. 301.

³ See *Wilkins v. Ellett*, 108 U. S. 256; *Lawrence v. Kittredge*, 21 Conn. 577.

⁴ *Goods of Maraver*, 1 Hagg. Eccl. 498; *Enohin v. Wylie*, 10 H. L. Cas. 1; *Whicker v. Hume*, 7 H. L. Cas. 123.

⁵ *Dupuy v. Wurtz*, 53 N. Y. 556; *Talbot v. Chamberlain*, 149 Mass. 57.

⁶ See *Bremer v. Freeman*, 10 Moore P. C. 306; *Haven v. Foster*, 9 Pick. (Mass.) 112.

⁷ *Udny v. Udny*, L. R. 1 H. L. Sc. 441; *Gilman v. Gilman*, 52 Me. 165; *Wilbraham v. Ludlow*, 99 Mass. 587.

⁸ *In re Johnson*, [1903] 1 Ch. 821.

domicile of the deceased was to be determined by foreign and not by English law. The main issue was the disposition to be made of English movables. By English law, which controlled the property, the domicile of the deceased was the determining fact. Obviously, therefore, the question of domicile should have been determined by English law. These two cases not only rest on no authority, but are opposed to two eminent text-writers,⁹ to the weight of the scanty American authority,¹⁰ and to prior and apparently controlling decisions in England, which seem to have been overlooked by court and counsel alike.¹¹ The true rule, therefore, appears to be that when the requisites of domicile, according to the *lex rei sitae*, exist, that law infers domicile, without regard to the law of the country where the deceased resided.

Another point in the prior Chancery decision⁸ is worth comment. The court suggests that, if it recognized the Baden domicile, it would then be bound to ascertain, not the Baden law of succession, but what territorial law of succession the Baden law would adopt under the circumstances, and then distribute these English movables accordingly. In other words, the court would apply first the English rule and then the Baden rule as to conflict of laws, in order to ascertain the rule of succession. This doctrine seems fundamentally wrong. It treats English movables, situated in England and controlled by English law, as if they were situated in Baden and controlled by Baden law. It reaches the right result only when the English and the foreign law adopt the same rule of succession, and then the application of the foreign law is superfluous. *Collier v. Rivaz*,¹¹ it is true, gives some support to this position, but the apparently controlling cases of *Bremer v. Freeman*¹¹ and *Hamilton v. Dallas*¹¹ are directly opposed.

DAMAGES AGAINST IMPROVER OF CONVERTED PROPERTY.—Both on authority and on legal theory there has been much doubt as to what measure of damages should be recovered from one who has wrongfully severed property from another's land and increased its value. The tendency has been to depart from the technicalities of the common law and to deal with the question on grounds of fairness and public policy. The cases which have arisen may be divided into four classes: where there are a *bona fide* plaintiff and a *bona fide* defendant; a *bona fide* plaintiff and a *mala fide* defendant; a *mala fide* plaintiff and a *bona fide* defendant; and a *mala fide* plaintiff and a *mala fide* defendant. Where the plaintiff has acted in good faith, the authorities are practically unanimous in making the *fides* of the defendant a determining factor. Against a *bona fide* defendant, a *bona fide* plaintiff has been allowed by different courts to recover the value of the property before severance from the land,¹ the value after severance,² and the enhanced value less the increase for which the defendant was responsible.³ This conflict is due to the fact that the courts have not generally proceeded according to what seems to be the true theory,—

⁹ Dicey, Conf. of Laws, 113; 1 Wharton, Conf. of Laws, 157.

¹⁰ *Harral v. Harral*, 39 N. J. Eq. 279. But see *Dupuy v. Wurtz*, 53 N. Y. 556, 570.

¹¹ *Collier v. Rivaz*, 2 Curt. Eccl. 855; *Anderson v. Laneville*, 9 Moore P. C. 325; *Bremer v. Freeman*, 10 Moore P. C. 306; *Hamilton v. Dallas*, 1 Ch. D. 257.

¹ *Forsyth v. Wells*, 41 Pa. St. 291.

² *White v. Yawkey*, 108 Ala. 270.

³ *Anderson v. Besser*, 131 Mich. 481.